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**REMARKS**

Claims 1-12 and 60-82 are pending in the subject application. By this Amendment, applicants have amended claims 1-6, 67 and 78, and canceled claims 76-77.

Support for the amendments to claim 1 may be found in the specification at, inter alia, page 9, lines 15-16; page 9, line 21; page 9, lines 29-30; and page 10, lines 4-5.

Support for the amendments to claim 3 may be found in the specification at, inter alia, page 10, lines 7-10.

Support for the amendments to claim 4 may be found in the specification at, inter alia, page 9, lines 29-30; and page 10, lines 14-15.

Support for the amendments to claim 5 may be found in the specification at, inter alia, page 9, lines 29-30; and page 10, lines 20-25.

Support for the amendments to claim 6 may be found in the specification at, inter alia, page 9, lines 29-30; and page 10, lines 28-31.

Support for the amendments to claim 67 may be found in the specification at, inter alia, page 19, lines 18-22.

Support for the amendments to claim 78 may be found in the specification at, inter alia, page 18, lines 23-29.

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Applicants maintain that these amendments raise no issue of new matter. Accordingly, claims 1-12, 60-75 and 78-82 will be pending upon entry of this Amendment.

### **35 U.S.C. §112, First Paragraph Rejections**

The Examiner rejected claims 1-12 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement.

Specifically, the Examiner asserted that the incorporation of "(or CH<sub>2</sub>)" into the structure is not consistent with the disclosure.

In response, applicants respectfully traverse, and direct the Examiner to page 10, lines 4 to 5 of the specification. The specification states that "The ether linkage to the benzene ring may alternatively be -N-, -S-, or -C-." Therefore, the variable A in the structure of claim 1 may be attached to the benzene ring by "O or CH<sub>2</sub>" as disclosed in the specification.

The Examiner further asserted that in addition, the replacement of "-C=C-C<sub>2</sub>HOH-" with "-C≡C-CHOH-" is not consistent with the specification. The Examiner asserted that it is unclear why a double bond was replaced with a triple bond.

In response, applicants respectfully traverse, noting that the structure in question is disclosed on page 9, line 27 of the specification as "-C≡C-C<sub>2</sub>HOH-" (with a triple bond) and not "-C=C-C<sub>2</sub>HOH-" (with a double bond). The Amendment filed February 25, 2005 replaced the structure "-C≡C-C<sub>2</sub>HOH-" of claim 1 with "-C≡C-CHOH-". A triple bond was disclosed in the specification and maintained in

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the structure of claim 1. Applicants replaced the "-C≡C-C<sub>2</sub>HOH-" of claim 1 because it contains an obvious typographical error, i.e., the presence of "C<sub>2</sub>" in the structure. Applicants made the amendment to change this typographical error by removing the "2" after the third carbon atom. Those skilled in the art would recognize this typographical error and understand that "-C≡C-CHOH-" was the intended structure.

In view of the above, applicants maintain that the pending claims satisfy the provisions of 35 U.S.C. §112, first paragraph.

#### **35 U.S.C. §112, Second Paragraph Rejections**

The Examiner rejected claims 1-12 and 67-82 under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Specifically, the Examiner alleged that claims 1-12 and 67-81 as written are ambiguous because the variable X is defined as an integer from 1-10 instead of a substituent as required in claim 1.

In response, but without conceding the correctness of the Examiner's rejection, applicants have removed the variable "X" from claim 1. Accordingly, this rejection is obviated.

The Examiner further asserted that claim 1 as written is ambiguous. Allegedly, the phrase 'wherein a linkage...-C-' is unclear because the structure discloses specific linkages (O or CH<sub>2</sub>) to the benzene ring, however, the phrase discloses that the linkage is nitrogen, sulfur, oxygen or carbon.

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In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claim 1 to recite "wherein the linkage to the benzene ring by R<sub>1</sub>, R<sub>2</sub>, R<sub>3</sub>, R<sub>4</sub> and R<sub>5</sub> is independently selected from the group consisting of -N-, -S-, -O- or -C-." This linkage clearly defines the alternative linkages of these R groups to the benzene ring.

The Examiner further asserted that in claim 1, the terms 'comprises' and 'may be' are not acceptable Markush terminology.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claim 1 to read "selected from the group consisting of."

The Examiner further stated that in claim 1, applicants refer to the variable 'n'. The Examiner alleged, however, that the variable 'n' is not defined in the claims.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended the claims to remove reference to the variable "n." Accordingly, this rejection is now obviated.

The Examiner further asserted that in claim 2, the term 'comprises' is not acceptable Markush terminology.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claim 2 to recite "is independently selected from the group consisting of."

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The Examiner also asserted that in claim 3, 'A=CH<sub>2</sub>' is confusing because applicants do not allow the variable A to be CH<sub>2</sub> in its definition.

In response, applicants respectfully traverse. Applicants direct the Examiner to claim 1 which provides that variable A comprises a (C<sub>1</sub>-C<sub>10</sub>)-alkyl chain. This alkyl chain includes the structure "CH<sub>2</sub>" which is a one carbon alkyl chain.

The Examiner further asserted that in claim 4, the phrase "Q=0" is ambiguous because in claim 1, lines 22-23, Q is defined as an integer from 1 to 10.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claim 4 to read "Q=1."

The Examiner further asserted that claim 5 as written is confusing because it is unclear what the definition of R<sub>3</sub> is. The Examiner alleged that it is unclear if applicants intended line 3 (R<sub>1</sub>=...-OH) to be on a single line. The Examiner further alleged that the claim is ambiguous because the variable Q cannot be zero.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claim 5 to recite "Q=1." Applicants note that in claim 5, R<sub>3</sub> is defined as the structure containing a carbonyl group attached to a six-carbon ring bearing a chlorine atom. In addition, applicants have separated all the R groups to separate lines to clearly show the alternate structures for each one.

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The Examiner asserted that claim 6 is ambiguous because the variable Q cannot be zero.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claim 6 to recite "Q=1."

The Examiner further alleged that claims 67-75 as written are ambiguous because it is unclear what symptoms are being alleviated.

In response, but without conceding the correctness of the Examiner's rejection, applicants have amended claims 67-75. These claims provide a method of treating an individual suffering from a bacterial infection, and do not recite the words "symptoms" or "alleviating."

The Examiner further asserted that claims 76-77 are ambiguous because it is unclear which pathways may be altered using gemfibrozil.

In response, but without conceding the correctness of the Examiner's rejection, applicants note that claims 76-77 have been cancelled. Accordingly, this rejection is now moot.

The Examiner also asserted that claims 78-82 are ambiguous because the term "sensitive" is a relative term. Thus, since applicants have not set forth a definition of what the term means as it relates to the instant invention, one cannot ascertain what is being claimed.

In response, but without conceding the correctness of the

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Examiner's rejection, applicants note that amended claim 78 recites language addressing the Examiner's concerns.

In view of the above, applicants maintain that the pending claims satisfy the provisions of 35 U.S.C. §112, second paragraph.

**Claim Rejections Under 35 U.S.C. §102(b)**

The Examiner rejected claims 78, 79, 81 and 82 under 35 U.S.C. §102(b) as allegedly anticipated by Yajko et al. (Abstracts of Interscience Conference on Antimicrobial Agents and Chemotherapy, 1995, A105, herein "Yajko").

In response, applicants respectfully traverse. Amended claim 78 provides "A method for determining whether or not a bacterium is sensitive to gemfibrozil which consists essentially of contacting the bacterium with a concentration of gemfibrozil known to inhibit the growth of *Legionella pneumophila* and determining whether growth inhibition has occurred, thereby determining whether or not the bacterium is sensitive to the gemfibrozil."

Yajko discloses the administration of gemfibrozil together with another compound, ciprofloxacin. Yajko does not disclose all elements of the claims, thus it does not anticipate the subject claims.

The Examiner also rejected claims 1, 2, 4, 6 and 9-12 under 35 U.S.C. §102(b) as allegedly anticipated by Smith et al. (Journal of Bacteriology, May 1966, Vol. 91, pages 1854-1858, herein "Smith").

Briefly, the Examiner asserted that Smith discloses the growth

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inhibition of mycoplasma and the use of para-chlorophenoxy isobutyric acid as one of the inhibitors. The Examiner also asserted that para-chlorophenoxy isobutyric acid is encompassed by applicants' structure where  $R_1-R_6$  = hydrogen and (A)Q = absent.

In response, applicants respectfully traverse. Without conceding the correctness of the Examiner's rejection, applicants note that amended claims 3 to 6 recite "Q=1", as per claim 1, instead of "Q=0." Thus, Smith does not teach all elements of the rejected claims.

The Examiner further rejected claims 1, 2, 11, 60, 65, 66, 78, 79, 81 and 82 under 35 U.S.C. §102(b) as allegedly anticipated by Rudin et al. (J. Exp. Med., 1992, Vol. 176, pages 1439-1447, herein "Rudin").

In response, applicants respectfully traverse. Amended claims 1, 2 and 11 provide for a method for inhibiting growth of a bacterium which consists essentially of contacting the bacterium with a compound having a defined structure.

Amended claims 60, 65 and 66 provide for a method for inhibiting growth of a bacterium which consists essentially of contacting the bacterium with gemfibrozil in a concentration effective to inhibit growth of the bacterium.

Amended claim 78 provides for a method for determining whether or not a bacterium is sensitive to gemfibrozil which consists essentially of contacting the bacterium with a concentration of gemfibrozil known to inhibit the growth of *Legionella pneumophila* and determining whether growth inhibition has occurred, thereby



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determining whether or not the bacterium is sensitive to the gemfibrozil.

Rudin discloses the administration of gemfibrozil in conjunction with another compound, fluoroquinolone. Rudin does not disclose the administration or other use of gemfibrozil without another active agent. The rejected claims do not recite the administration of gemfibrozil in conjunction with an additional active compound. In short, Rudin does not disclose all elements of the pending claims, and thus, it does not anticipate these claims.

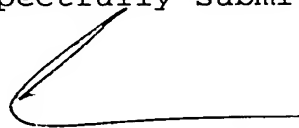
In view of the above, applicants maintain that the pending claims satisfy the provisions of 35 U.S.C. §102(b).

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.

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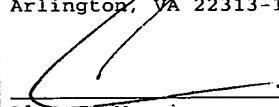
No fee is deemed necessary in connection with the filing of this Amendment. If any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, P.O. Box 1450 Arlington, VA 22313-1450,



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8/11/05  
Date